SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Regarding Investments of the Janus Short Duration Income ETF Listed Under NYSE Arca Equities Rule 8.600


I. Introduction

On January 30, 2017, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") \(^1\) and Rule 19b–4 thereunder, a proposed rule change regarding investments of the Janus Short Duration Income ETF ("Fund"), which is currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on February 17, 2017.\(^2\) On March 13, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. On March 30, 2017, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.\(^3\) On April 10, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendment No. 1.\(^4\) The Commission received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. The Exchange’s Description of the Proposed Rule Change, as Modified by Amendment No. 2 \(^5\)

The Shares of the Fund are currently listed and traded on the Exchange under Commentary .01 to NYSE Arca Equities Rule 8.600, which provides generic listing standards for Managed Fund Shares.\(^6\) The Shares are offered by Janus Detroit Street Trust ("Trust"), which is registered with the Commission as an open-end management investment company.\(^7\) Janus Capital Management LLC ("Adviser") is the Fund’s investment adviser.\(^8\) ALPS Distributors, Inc. is the principal underwriter and distributor of the Fund’s Shares. State Street Bank and Trust Company serves as the custodian, administrator, and transfer agent for the Fund.

Principal and Other Investments

According to the Exchange, the Fund seeks to provide a steady income stream...
with capital preservation across various market cycles. The Fund seeks to outperform the London Interbank Offered Rate 3-month rate by 2–3% through various market cycles with low volatility. The Fund pursues its investment objective by investing, under normal market conditions, at least 80% of its net assets in a portfolio of financial instruments described below.

According to the Exchange, the Fund may invest in Fixed Income Instruments, which may be represented by derivatives. The Fund may invest in exchange-traded closed-end funds (“CEFs”) that invest substantially all of their assets in Fixed Income Instruments. The Fund may invest in futures and options on futures instruments described above. The Fund may purchase and write exchange-traded or OTC put and call options on securities indices. The Fund may purchase or write covered and uncovered put and call options on interest rate swaps. The Fund may enter into swap agreements or utilize swap-related products, which are the following: Total return swaps based on Fixed Income Instruments or an index thereon; interest rate swaps; and credit default swaps (“CDS”) and index credit default swaps based on Fixed Income Instruments. The Fund may invest in swaps on U.S. and foreign currencies. The Fund may enter into single-name CDS agreements.

While the Fund, under normal market conditions, invests at least 80% of its net assets in the securities and financial instruments described above, the Fund may invest its remaining assets in foreign currency transactions on a spot (cash) basis.

**Investment Restrictions**

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) dictated illiquid by the Adviser, consistent with Commission guidance. The Fund monitors its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund’s net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance. The Fund is diversified within the meaning of the 1940 Act.

The Fund intends to qualify annually and elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code. The Fund will not concentrate its investments in a particular industry, as that term is used in the 1940 Act, and as interpreted, modified, or otherwise permitted by a regulatory authority having jurisdiction from time to time.

**Application of Generic Listing Requirements**

As noted above, the Shares are currently listed and traded on the Exchange under Commentary .01 to NYSE Arca Equities Rule 8.600, which provides generic listing standards for Managed Fund Shares. Commentary .01(e) to NYSE Arca Equities Rule 8.600 currently requires that, on both an initial and ongoing basis, no more than 20% of the Fund’s assets may be invested in OTC derivatives (calculated as the aggregate gross notional value of the OTC derivatives). The Exchange now proposes that up to 50% of the Fund’s assets (calculated as the aggregate gross notional value) may be invested in OTC derivatives that are used to reduce currency, interest rate, or credit risk arising from the Fund’s investments, including forwards, OTC options, and OTC swaps. The Fund’s investments in OTC derivatives other than OTC derivatives used to hedge the Fund’s portfolio against currency, interest rate, or credit risk will be limited to 20% of the assets in the Fund’s portfolio, calculated as the aggregate gross notional value of such OTC derivatives.

According to the Exchange, other than Commentary .01(e), the Fund’s portfolio will meet all other requirements of NYSE Arca Equities Rule 8.600.

**III. Discussion and Commission’s Findings**

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As noted above, the Exchange proposes that up to 50% of the Fund’s assets (calculated as the aggregate gross...
market participants at the same time. Trading in Shares of the Fund will be halted if the circuit-breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Moreover, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange states that the Adviser is not registered as a broker-dealer but the Adviser is affiliated with a broker-dealer and has implemented and will maintain a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition of and/or changes to the Fund’s portfolio. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities. In support of this proposal, the Exchange represents that:

1. Other than Commentary .01(e), the Fund’s portfolio will meet all other requirements of NYSE Arca Equities Rule 8.600.

2. Up to 50% of the Fund’s assets (calculated as the aggregate gross notional value) may be invested in OTC derivatives that are used to reduce currency, interest rate, or credit risk arising from the Fund’s investments, including forwards, OTC options, and OTC swaps. The Fund’s investments in OTC derivatives other than OTC derivatives used to hedge the Fund’s portfolio against currency, interest rate, or credit risk will be limited to 20% of the assets in the Fund’s portfolio, calculated as the aggregate gross notional value of such OTC derivatives.

3. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at
the time of investment) deemed illiquid by the Adviser, consistent with Commission guidance.

(4) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(5) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain CEFs, certain exchange-traded bank capital securities, certain exchange-traded options, and certain futures with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange is able to access from FINRA, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA’s Trade Reporting and Compliance Engine. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to certain municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

(6) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(7) For initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.

The Exchange represents that all statements and representations made in the filing regarding (1) the description of the portfolio; (2) limitations on portfolio holdings or reference assets; or (3) the applicability of Exchange listing rules specified in the rule filing constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

This approval order is based on all of the Exchange’s statements and representations, including those set forth above and in Amendment No. 2. For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act and Section 11A(a)(1)(C)(iii) of the Act and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml); or

• Send an email to rule-comments@sec.gov. Please include File Number SR–NYSEArca–2017–09 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–NYSEArca–2017–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (http://www.sec.gov/"

The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will “surveil” for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR–BATS–2016–04). In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of Amendment No. 2 in the Federal Register. As noted above, Amendment No. 2 revises the proposed rule change by changing the proposed limit on the Fund’s investments in OTC derivatives that are used for hedging purposes, from an unlimited amount to up to 50% of the Fund’s assets. Amendment No. 2 also provides clarifications and additional information to the proposed rule change. The changes and additional information in Amendment No. 2 helped the Commission to evaluate, among other things, whether the listing and trading of the Shares would be consistent with the protection of investors and the public interest. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that
proposed rule change (SR–NYSEArca–2017–09), as modified by Amendment No. 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.27
Eduardo A. Aleman, Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4770 To Modify the Date of Appendix B Web Site Data Publication


Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),1 and Rule 19b–4 thereunder,2 the Securities and Exchange Commission (”SEC” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4770 to modify the date of Appendix B Web site data publication pursuant to the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan”). The text of the proposed rule change is available on the Exchange’s Web site at http://nasdaqbx.ccwhallstreet.com/, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 4770(b) (Compliance with Data Collection Requirements)3 implements the data collection and Web site publication requirements of the Plan.4 Commentary .08 to Rule 4770 provides, among other things, that the requirement that the Exchange provide information to the SEC within 30 days following month end pursuant to Appendix B and C of the Plan shall commence at the beginning of the Pilot Period.5 Commentary .08 to Rule 4770 also provides that, with respect to data for the Pre-Pilot and Pilot Period, the requirement that the Exchange or DEA make Appendix B data publicly available on the Exchange’s or DEA’s Web site shall commence on April 28, 2017.6 BX is now proposing to amend Commentary .08 to Rule 4770 to delay the date by which Pre-Pilot and Pilot Appendix B data is to be made publicly available on the Exchange’s Web site from April 28, 2017 to August 31, 2017.7

In the SRO Tick Size Plan Proposal, the Participants stated that the public data will be made available for free “on a disaggregated basis by trading center” on the Web sites of the Participants and the Designated Examining Authorities.8 However, market participants have expressed confidentiality concerns regarding this approach for over-the-counter (“OTC”) data.9 Thus, BX is filing the instant proposed rule change to provide additional time to assess a means of addressing the confidentiality concerns raised in connection with the publication of Appendix B data related to OTC activity in furtherance of the objectives of the Plan.10 Pursuant to this amendment, Appendix B data publication will be delayed until August 31, 2017. The Participants anticipate filing additional proposed rule changes to address Appendix B data publication. BX has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be the date of filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,11 in general, and furthers the objectives of Section 6(b)(5) of the Act,12 in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. BX also believes that the proposal is consistent with Section